

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RICHARD JAMES WELK,
vs.
MATTHEW CATE,

CASE NO. 12cv2943-LAB (WVG)

**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

On January 22, 2014, the Court denied Petitioner Richard Welk's petition for writ of habeas corpus. Welk's sole claim was that the evidence presented at his murder trial was insufficient to show the killing was premeditated and deliberate.

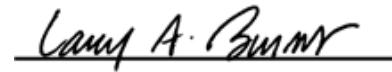
19 As discussed in the order denying the petition, the evidence was sufficient to meet
20 the lenient standard set forth in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Applying the
21 required “additional layer of deference,” see *Juan H. v. Allen*, 408 F.3d 1262, 1275 (9th Cir.
22 2005), Welk’s claim is even less tenable. As a last-ditch effort, Welk also attempted to argue
23 a self-defense claim, which he had never presented to the state supreme court, and which
24 therefore was unexhausted. Even if it were exhausted, the sufficiency standard was far from
25 being met here.

26 No evidentiary hearing was required, because the Court's review was limited to the
27 record before the state courts, see *Cullen v. Pinholster*, 131 S.Ct. 1388, 1399 (2011), and
28 that record refuted Welk's claims. See *Schrivo v. Landriagan*, 550 U.S. 465, 474 (2007).

1 The standard for issuance of a certificate of appealability, see *Miller-El v. Cockrell*,
2 537 U.S. 322, 327 (2003), is not met here. The certificate of appealability is therefore
3 **DENIED.**

4 **IT IS SO ORDERED.**

5 DATED: February 11, 2014

6 

7 **HONORABLE LARRY ALAN BURNS**
8 United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28